

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

EMMIS OPERATING COMPANY,)	Case No. 1:06-cv-0920-LJM-WTL
)	
Plaintiff,)	
)	
v.)	
)	
CBS RADIO INC.,)	
)	
Defendant.)	

DEFENDANT'S MOTION TO DISQUALIFY PLAINTIFF'S COUNSEL

Defendant CBS Radio Inc. ("CBS Radio"), by counsel and pursuant to the Indiana Rules of Professional Conduct (as adopted by this Court pursuant to Local Rule 83.5(g)), moves to disqualify the law firm of Ice Miller, which appeared as counsel for Plaintiff Emmis Operating Company ("Emmis") just last month.

As more fully detailed in the accompanying Memorandum in Support of Motion to Disqualify Plaintiff's Counsel, this lawsuit arises out of Emmis' claim that CBS Radio tortiously induced Walter Berger (Emmis' former Executive Vice President, Chief Financial Officer and Treasurer) to breach his Employment Agreement with Emmis. Ice Miller represented Berger and negotiated that very Employment Agreement on his behalf; however, Ice Miller now seeks to switch sides and litigate a purported breach of this Employment Agreement against Berger's new employer, CBS Radio.

Emmis must first prove that Berger breached his Employment Agreement to establish that CBS Radio tortiously induced Berger to breach his Employment Agreement. Having hired Berger's counsel on the negotiation of the Employment Agreement, Emmis has an improper benefit in prosecuting its claims in both this action and a companion arbitration that Emmis filed

against Berger for breach of his Employment Agreement. Thus, Emmis has improperly shouldered Berger and CBS Radio with the burden and disadvantage of having Berger face his own contract counsel, now working adverse to Berger's and CBS Radio's interests.

Immediately after receiving Ice Miller's Notices of Appearance on behalf of Emmis on December 8, 2006, counsel for CBS Radio advised Ice Miller of the readily apparent conflict of interest and requested written confirmation that Ice Miller has not breached any obligations owed to Berger. Having received no response, Berger faxed a letter to Ice Miller on December 28, 2006, demanding that it withdraw as counsel for Emmis because of the conflict of interest and because "[t]he contract was the subject of extensive negotiation, and I shared numerous confidences with your firm during the course of those negotiations."¹

In response, on January 3, 2007, Ice Miller incredibly suggested that there is no conflict of interest because the issue of whether Berger breached the contract is a "given".² This is simply false as set out in the supporting memorandum.

WHEREFORE, CBS Radio moves this Court for an Order granting its Motion to Disqualify Ice Miller as counsel for Plaintiff Emmis as well as awarding CBS Radio its fees and costs associated with this motion, together with all other relief appropriate under the circumstances.

Respectfully submitted,

LOCKE REYNOLDS LLP

By: /s/ Thomas L. Davis

Thomas L. Davis, #4423-49

James Dimos, #11178-49

Joel E. Tragesser, #21414-29

Attorneys for Defendant, CBS Radio Inc.

¹ Berger's letter is attached hereto as Exhibit 1.

² Ice Miller's letter is attached hereto as Exhibit 2.

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of January, 2007, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

G. Daniel Kelley

Michael A. Blickman

Scott D. Matthews

ICE MILLER

daniel.kelley@icemiller.com

michael.blickman@icemiller.com

scott.matthews@icemiller.com

/s/ Thomas L. Davis

LOCKE REYNOLDS LLP

201 North Illinois Street, Suite 1000

P.O. Box 44961

Indianapolis, IN 46244-0961

Phone: 317-237-3800

Fax: 317-237-3900

tdavis@locke.com

jdimos@locke.com

jtragesser@locke.com

8135271